

# HOUSE BILL 958

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By: **Delegate Carter**

Introduced and read first time: February 12, 2010

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Minor Child or Incapacitated Child – Forced Shares**

3 FOR the purpose of establishing that a certain minor child or incapacitated child may  
4 not be deprived of a certain share of the estate of a parent of the child unless the  
5 parent has just cause to disinherit the child; providing that a decedent with a  
6 certain child may not make donations to certain other persons beyond certain  
7 limitations; establishing the amount of a certain forced share; prohibiting the  
8 imposition of charges, conditions, or burdens on a certain forced share, with  
9 certain exceptions; defining certain terms; providing for the application of this  
10 Act; and generally relating to disinheriting a minor child or an incapacitated  
11 child.

12 BY adding to

13 Article – Estates and Trusts

14 Section 3–401 through 3–405 to be under the new subtitle “Subtitle 4. Forced  
15 Shares”

16 Annotated Code of Maryland

17 (2001 Replacement Volume and 2009 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Estates and Trusts**

21 **SUBTITLE 4. FORCED SHARES.**

22 **3–401.**

23 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
24 **INDICATED.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(B) “FORCED HEIR” MEANS A CHILD OF A DECEDENT WHO AT THE TIME**  
2 **OF THE DEATH OF THE DECEDENT:**

3                   **(1) IS 17 YEARS OF AGE OR YOUNGER; OR**

4                   **(2) BECAUSE OF MENTAL INCAPACITY OR PHYSICAL INFIRMITY,**  
5 **IS PERMANENTLY INCAPABLE OF TAKING CARE OF THE PERSON OR PROPERTY**  
6 **OF THE CHILD.**

7           **(C) “FORCED SHARE” MEANS THE SHARE OF A DECEDENT’S ESTATE TO**  
8 **WHICH A FORCED HEIR IS ENTITLED.**

9 **3–402.**

10           **A FORCED HEIR MAY NOT BE DEPRIVED OF THE FORCED SHARE OF THE**  
11 **DECEDENT’S ESTATE RESERVED TO THE FORCED HEIR UNDER § 3–403 OF THIS**  
12 **SUBTITLE.**

13 **3–403.**

14           **(A) UNLESS A DECEDENT HAS JUST CAUSE TO DISINHERIT A FORCED**  
15 **HEIR, A DECEDENT MAY NOT MAKE DONATIONS INTER VIVOS AND MORTIS**  
16 **CAUSA TO PERSONS WHO ARE NOT FORCED HEIRS THAT EXCEED:**

17                   **(1) 75% OF THE PROPERTY OF THE DONOR IF THE DONOR**  
18 **LEAVES, AT DEATH, ONE FORCED HEIR; OR**

19                   **(2) 50% OF THE PROPERTY OF THE DONOR IF THE DONOR**  
20 **LEAVES, AT DEATH, TWO OR MORE FORCED HEIRS.**

21           **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**  
22 **FORCED SHARE OF A FORCED HEIR IS 25% OF THE PROPERTY OF THE**  
23 **DECEDENT.**

24                   **(2) THE FORCED SHARE OF EACH OF TWO OR MORE FORCED**  
25 **HEIRS SHALL BE DETERMINED ON A PRO RATA BASIS AND SHALL TOTAL 50% OF**  
26 **THE PROPERTY OF THE DECEDENT.**

27           **(C) IF THE FRACTION UNDER SUBSECTION (B) OF THIS SECTION THAT**  
28 **WOULD OTHERWISE BE USED TO CALCULATE THE FORCED SHARE IS GREATER**  
29 **THAN THE FRACTION OF THE DECEDENT’S ESTATE TO WHICH THE FORCED HEIR**

1 WOULD SUCCEED BY INTESTACY, THEN THE FORCED SHARE SHALL BE  
2 CALCULATED BY USING THE FRACTION OF AN INTESTATE SUCCESSOR.

3 **3-404.**

4 IF A FORCED HEIR PREDECEASES THE DECEDENT, REPRESENTATION BY  
5 THE HEIRS OF THE FORCED HEIR SHALL TAKE PLACE FOR PURPOSES OF  
6 FORCED HEIRSHIP UNDER THIS SUBTITLE.

7 **3-405.**

8 NO CHARGES, CONDITIONS, OR BURDENS MAY BE IMPOSED ON THE  
9 FORCED SHARE EXCEPT THOSE EXPRESSLY AUTHORIZED BY LAW, SUCH AS A  
10 USUFRUCT IN FAVOR OF A SURVIVING SPOUSE OR THE PLACING OF THE FORCED  
11 SHARE IN TRUST.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
13 construed to apply only prospectively and may not be applied or interpreted to have  
14 any effect on or application to any estate opened before the effective date of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2010.